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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,923	08/18/2003	Robert W. Fox	036407.0002	3647

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EXAMINER

GROSSO, HARRY A

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,923

Applicant(s)

FOX ET AL.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7, 8, 10, 12-19 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 10, 12-19, 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

The objection to the drawings in the previous action is overcome by the amendment filed July 29, 2005. The objection is withdrawn.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 7, 8, 10, 12, 15, 19, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al (Kobayashi) in view of Dubois et al (Dubois), both of record.

3. Regarding claims 1-3, 7, 12, 19, 21, 23 and 24 Kobayashi discloses a container (11, Figures 4-6) with sides and an upper edge and a closure (5, Figures 3-4 and column 5 lines 26-65) with a frame (5b) that extend around the cover panel, a removable cover panel (5a). The removable panel is made of thermoplastic, polymeric material (1, 6 and column 5, lines 1-25 and 28). The closure frame (5b) has downwardly extending legs that facilitate placement of the closure on the container. The closure is bonded to the container by heat sealing means (column 6, lines 23-25). Kobayashi does not disclose the container bottom but the container is a tightly closed container for storage of food and beverage and a bottom would be inherent to this function (columns 1, lines 22-25).

Kobayashi does not teach the use of an electromagnetic, polymeric fusible material to bond the closure to the container. Dubois discloses the use of a ring of electromagnetic, polymeric, fusible material (26, 26a, Figures 4 and 6, and column 3, lines 16-37). Dubois refers to the material as a strand or slug but discloses that the strand extends completely around the end assuming a substantially circumferentially extending configuration or a ring. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a ring of electromagnetic, polymeric, fusible material as disclosed by Dubois in the container disclosed by Kobayashi to attach a closure to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials.

The examiner considers the term "molded" as applied to the fusion ring and the cover panel to constitute a product by process limitation that does not materially affect structure.

4. Regarding claims 8, 10, 15, and 22, Kobayashi discloses a ring tab (8, Figures 2-3 and column 5, lines 56-60) as a gripping means to remove the cover panel and a score cut (7, Figures 2-3 and column 5, lines 42-43) as means for removing the cover panel.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi and Dubois as applied to claim 1 and further in view of Brifcani et al, of record. The container of claim 1 is disclosed having an upwardly extending peripheral rim (5b, Figure 4a) but Kobayashi and Dubois do not teach stacking of the containers. Brifcani et al discloses the use of the upwardly extending peripheral rim in conjunction

with the bottom profile to allow stacking of containers (Figure 9 and column 8, lines 24-30). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of the upwardly extending peripheral rim in conjunction with the bottom profile to allow stacking of containers as disclosed by Brifcani et al in the container disclosed by Kobayashi and Dubois to allow stacking of the containers for storage convenience and better storage space utilization.

6. Claims 13, 14, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi and Dubois applied to claims 1 and 19 and further in view of Guglielmo, of record.

Kobayashi and Dubois disclose the container of claims 1 and 19, and Dubois further discloses the use of non-contact fixtures (28, 30, Figure 6 and column 3, lines 38-43) for application of induction (electromagnetic) heating principles as disclosed by Guglielmo (column 2 line 41 to column 3 line 12) to attach closures to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of non-contact fixtures for application of induction (electromagnetic) heating principles as disclosed by Dubois and Guglielmo in the container disclosed by Kobayashi and Dubois to attach a closure to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials.

7. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi in view of Dubois et al (Dubois) and Guglielmo. Kobayashi discloses the

Art Unit: 3727

legs and a removable cover panel as discussed in paragraph 3 above but does not disclose a fusion ring for bonding the closure to the container by the use of non-contact application of an electromagnetic field. Dubois and Guglielmo disclose the use of a ring of electromagnetic, polymeric, fusible material and non-contact fixtures for application of an electromagnetic field to bond the closure to the container as discussed in paragraphs 3 and 6 above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a ring of electromagnetic, polymeric, fusible material and use of non-contact fixtures for application of induction (electromagnetic) heating principles as disclosed by Dubois and Guglielmo in the container disclosed by Kobayashi to attach a closure to a container in a process that is clean, rapid and reliable without destructive heating in surrounding plastic materials.

8. Claims 16, 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi and Dubois (or Dubois and Guglielmo) and further in view of McHenry et al, of record. Kobayashi discloses the closure with a removable panel and a score cut for removing the panel as discussed in paragraph 4 above but Kobayashi does not teach the use of opposing, pre-scored cuts, offset, pre-scored cuts or aligned pre-scored cuts in the cover panel. McHenry et al discloses the use of opposed, offset score cuts (10, 11 in Figure 3b) on first and second surfaces of the end panel which causes the end to open easily and cleanly (column 5, lines 21-24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of opposed, offset score cuts on first and second surfaces of the

end panel as disclosed by McHenry et al in the container disclosed by Kobayashi and Dubois (or Dubois and Guglielmo) to allow the end to open easily and cleanly.

Response to Arguments

9. Applicant's arguments filed July 29, 2005 have been fully considered but they are not persuasive.

Applicant argues that Kobayashi does not teach a closure with a frame. In response, Kobayashi's closure has element (5b) that serves to attach the closure to the container and remains with the container when the cover panel is removed, thus serving as the frame for the closure.

Applicant argues that Kobayashi does not disclose a molded fusion ring. In response, this is addressed by the use of Dubois with Kobayashi as discussed in the above action.

Applicant argues that Dubois teaches a strand of fusion material rather than a molded ring. In response, Dubois refers to the material as a strand or slug but discloses that the strand extends completely around the end assuming a substantially circumferentially extending configuration or a ring. The examiner considers the term "molded" to constitute a product by process limitation that does not materially affect structure.

Applicant argues that there is no encouragement to combine Kobayashi with Dubois and Guglielmo. In response, both Kobayashi and Dubois and Guglielmo address the issue of attaching a closure to a container. In that respect they are both addressing the same problem and the combination is appropriate.

Applicant argues that Brifcani and McHenry do not teach the use of a molded fusion ring. In response, Brifcani and McHenry are used for teaching of other elements and are not depended on for teaching of the use of the molded fusion ring.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Heyn et al (5,125,528) discloses a closure with a frame molded around a removeable panel.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-

Art Unit: 3727

4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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